

United States
Circuit Court of Appeals¹³
For the Ninth Circuit.

YEP GAN and LEE HON MIN,
Appellants,

vs.

JOHN D. NAGLE, as Commissioner of Immigration
at the Port of San Francisco, California,
Appellee.

Transcript of Record.

Upon Appeal from the Southern Division of the
United States District Court for the
Northern District of California,
Second Division.

FILED

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names of Attorneys of Record.

For Petitioner and Appellant:

JOHN L. McNAB, Esq., S. C. WRIGHT, Esq.,
and BYRON COLEMAN, Esq., San Francisco, Cal.

For Respondent and Appellee:

UNITED STATES ATTORNEY, San Francisco, Cal.

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 17,922.

In the Matter of the Application for Writ of Habeas Corpus on Behalf of YEP GAN.

Praeceptum for Transcript of Record.

To the Clerk of the Above-entitled Court:

Sir:

Please issue certified copies of the following proceedings, etc.:

1. Petition for writ of habeas corpus.
2. Order to show cause therein.
3. Demurrer.
4. Order sustaining demurrer, denying petition and discharging order to show cause.
5. Notice of appeal.
6. Petition for appeal.
7. Order allowing appeal.

8. Assignment of errors.
9. Stipulation and order as to exhibits.
10. Praeceptum for appeal and all minute orders of Court, except those of postponement.
11. Citation on appeal.

Sept. 14, 1923.

JOHN L. McNAB,
S. C. WRIGHT,
BYRON COLEMAN,

Attorneys for Petitioner and Detained, the Appellant.

Receipt of a copy of the within praecipe for transcript of record is hereby admitted this 14th day of September, 1923.

JOHN T. WILLIAMS,
United States Attorney.

[Endorsed]: Filed Sep. 14, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.
[1*]

In the District Court of the United States in and for the Northern District of California, First Division.

No. (17,922).

In the Matter of the Application for Writ of Habeas Corpus on Behalf of YEP GAN.

Petition for Writ of Habeas Corpus.

Your petitioner, Lee Hon Min, being duly sworn, on oath deposes and says:

*Page-number appearing at foot of page of original certified Transcript of Record.

That he is the next friend of Yep Gan, and makes this petition on behalf of said Yep Gan. That said Yep Gan is unlawfully imprisoned and restrained of his liberty by John D. Nagle, Commissioner of Immigration in the city and county of San Francisco, in said district, under and by virtue of a warrant of deportation heretofore issued by the Secretary of Labor of the United States. That petitioner is unable to attach a copy of said warrant of deportation for the reason that petitioner is informed that the record in the case of said Yep Gan is in Washington, D. C., and is not in the possession of said Commissioner of Immigration in the city and county of San Francisco.

That petitioner has nevertheless ordered a copy of said warrant and all other papers in said record and will immediately on receipt thereof file the same in this court.

That said imprisonment and restraining of the liberty of the said Yep Gan is unlawful in this:

I. That said Secretary of Labor of the United States has no jurisdiction over the person of said Yep Gan and no authority or jurisdiction to issue said warrant.

II. That said Secretary of Labor exceeded his jurisdiction an authority in issuing said warrant of deportation.

III. That said warrant of deportation is void in this: That it appears from the record in said case that said Yep Gan [2] is the son of a native-born Chinese, a citizen of the United States, and is there-

fore, himself a citizen of the United States, and not subject to deportation by said Secretary of Labor.

IV. That said Yep Gan was not given a fair and impartial trial and hearing by the said Immigration officials of the United States prior to the issuing of said warrant of deportation and upon which said warrant is purported to be based, all of which will more fully appear by the record of the testimony and the proceedings given and adduced at said hearing, which said record has been ordered by your petitioner and will be filed in this proceeding, that among other reasons why your petitioner was not given a fair and impartial trial and hearing in said matter, your petitioner alleges as follows: That there was no evidence adduced at said hearing to prove that said Yep Gan was other than the son of a native-born Chinese citizen of the United States, yet said immigration officials refuse to accept the testimony of the father of said Yep Gan as evidence of the birth of his son.

V. That said Yep Gan is a citizen of the United States and belongs to the class of persons exempt from the jurisdiction and authority of said Secretary of Labor, and said Yep Gan asserts that he has the right to remain in the United States at the present time.

Your petitioner alleges that the Commissioner of Immigration in San Francisco intends to deport said Yep Gan to China by steamer "President Taft" sailing June 28th, 1923, and there is, therefore not sufficient time to procure the record before that date.

WHEREFORE, your petitioner prays that a writ of habeas corpus be issued directed to said John D. Nagle, Commissioner of Immigration at San Francisco, California, in order that the cause of detention of said Yep Gan may be inquired into and that in the meantime the deportation of said Yep Gan be stayed.

JOHN L. McNAB,
BYRON COLEMAN,
TIMOTHY HEALY,
Attorneys for Petitioner. [3]

State of California,
City and County of San Francisco,
Northern District of California,—ss.

Lee Hon Min, being first duly sworn, deposes and says:

That he is the petitioner named in the foregoing petition; that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge and belief, except as to those matters which are therein stated on information and belief, and as to those matters he believes it to be true.

LEE HON MIN.

Subscribed and sworn to before me this 28th day of June, 1923.

[Seal]

W. W. HEALEY,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Jun. 28, 1923. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.

In the District Court of the United States in and for the Northern District of California, First Division.

No. 17,922.

In the Matter of the Application for Writ of Habeas Corpus on Behalf of YEP GAN.

Order to Show Cause.

Upon consideration of the petition filed in the above-entitled cause, it is ordered that the respondent, the Commissioner of Immigration at the port of San Francisco, show cause in this court, in the courtroom thereof in the city and county of San Francisco, at 10 o'clock A. M. on the 2d day of July, 1923, why the writ of habeas corpus should not issue as prayed for by the petitioner herein.

Let a copy of this order be served forthwith upon said respondent and upon the United States Attorney for this district, and it is

FURTHER ORDERED that deportation of said Yep Gan be and the same is hereby stayed until further order of this Court.

Dated: July 28th, 1923..

M. T. DOOLING,
Judge of the District Court.

[Endorsed]: Filed Jun. 28, 1923. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.
[5]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 17,922.

In the Matter of YEP GAN on Habeas Corpus.

Demurrer to Petition for Writ of Habeas Corpus.

Comes now the respondent, John D. Nagle, Commissioner of Immigration, at the port of San Francisco in the Southern Division of the Northern District of California, and demurs to the petition for a writ of habeas corpus in the above-entitled cause and for grounds of demurrer alleges:

I.

That the said petition does not state facts sufficient to entitle petitioner to the issuance of a writ of habeas corpus, or for any relief thereon.

II.

That said petition is insufficient in that the statements therein relative to the record of the testimony taken on the trial of the said applicant are conclusions of law and not statements of the ultimate facts.

WHEREFORE, respondent prays that the writ of habeas corpus be denied.

JOHN T. WILLIAMS,
United States Attorney,
ALMA M. MYERS,
Asst. U. S. Attorney,
Attorneys for Respondent.

[Endorsed]: Filed Aug. 20, 1923. Walter B. Maling, Clerk. [6]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, on Monday, the 20th day of August, in the year of our Lord, one thousand nine hundred and twenty-three. Present: the Honorable WM. C. VAN FLEET, District Judge.

No. 17,922.

In the Matter of YEP GAN on Habeas Corpus.

Minutes of Court—August 20, 1923—Order Sustaining Demurrer and Denying Writ of Habeas Corpus.

This matter came on regularly this day for hearing on order to show cause as to issuance of a writ of habeas corpus. John L. McNab, Esq., was present for and on behalf of petitioner and detained. Miss Alma M. Meyers, Asst. U. S. Atty., was present for and on behalf of respondent, and filed demurrer to petition, and all parties consenting thereto, it is ordered that the Immigration Records be filed as Respondent's Exhibits "A," "B," "C" and "D" and that the same be considered as part of original petition. After argument by the respective attorneys, the Court ordered said matter be and the same is hereby submitted. After due consideration had thereon, the Court ordered that said demurrer to petition for writ of habeas corpus

be and the same is hereby sustained, the petition for writ of habeas corpus denied and order to show cause discharged. [7]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 17,922.

In the Matter of the Application for Writ of Habeas Corpus on Behalf of YEP GAN.

Notice of Appeal.

To the Clerk of the Above-entitled Court and the Honorable John T. Williams, U. S. Attorney for the Northern District of California:

You and each of you will please take notice that Yep Gan, the detained person herein by Lee Hon Min, the petitioner herein, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the order made and entered herein on the 20th day of August, 1923, by the Honorable William M. Van Fleet, Judge of the above-entitled court, sustaining the demurrer to the petition for writ of habeas corpus filed herein on behalf of the said Yep Gan; discharging the order to show cause and denying the petition for writ of habeas corpus on behalf of the said Yep Gan.

Dated, San Francisco, California, August 22, 1923.

JOHN L. McNAB,

S. C. WRIGHT,

BYRON COLEMAN,

Attorneys for Petitioner and Detained, the Appellant.

Copy of the within is hereby admitted this 23d day of August, 1923.

JOHN T. WILLIAMS,

United States District Attorney.

[Endorsed]: Filed Aug. 23, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.
[8]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 17,922.

In the Matter of the Application for Writ of Habeas Corpus on Behalf of YEP GAN.

Petition for Appeal.

Now comes Yep Gan, the detained, by Lee Hon Min, the petitioner and the appellants herein and say:

That on the 20th day of August, 1923, the above-entitled Court made and entered its order denying the petition for writ of habeas corpus prayed for and filed in the above-entitled matter; sustained a demurrer to said petition and discharged an order to show cause why said petition should not be

granted. The Court in said order made certain errors to the prejudice of the appellants herein, all of which will more fully appear from the assignment of errors filed herein.

WHEREFORE these appellants pray that an appeal may be granted on behalf of the United States Circuit Court of Appeals of the Ninth Circuit for the correction of the errors complained of, and further that the transcript of the record and proceedings and papers in the above-entitled matter, as shown by the praecipe, may be sent and transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit under the rules of said Court and in accordance with the law in such cases made and provided; that all further proceedings in this matter be stayed until a final determination of said appeal.

Dated San Francisco, California, August 22, 1923.

J. L. McNAB,

S. C. WRIGHT,

BYRON COLEMAN,

Attorneys for Petitioner and Detained, Appellants.

[9]

Copy of the within is hereby admitted this 23d day of August, 1923.

JOHN T. WILLIAMS,

United States District Attorney.

[Endorsed]: Filed Aug. 23, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

[10]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 17,922.

In the Matter of the Application for Writ of Habeas Corpus on Behalf of YEP GAN.

Assignment of Errors.

Now comes Yep Gan, the detained person herein by Lee Hon Min, the petitioner herein, both of whom are appellants through their attorney John L. McNab, and specifies the following as the errors upon which they will rely and will urge upon this appeal:

I. That the Court erred in denying a petition for writ of habeas corpus.

II. That the court erred in sustaining the demurrer of the United States to said petition for writ of habeas corpus.

III. That the Court erred in discharging the order to show cause why a writ of habeas corpus should not issue.

IV. That the Court erred in holding that the Commissioner of Immigration and the Secretary of Labor granted the said Yep Gan a fair hearing, and that he was not excluded from the United States without due process of law.

V. That the Court erred in sustaining the finding and decision of the Commissioner of Immigration and the United States Department of Labor that the said Yep Gan was not a native-born citizen of the

United States and entitled to enter, be and remain in the United States of America.

WHEREFORE, because of manifest errors committed by the said Court, the appellants through their attorney pray that the said order and judgment sustaining the demurrer to petition for writ of habeas corpus, discharging the order to show cause, and denying the writ of habeas corpus in the above-entitled matter [11] be reversed. and for such other and further relief as the Court may deem proper.

Dated August 22, 1923.

JOHN L. McNAB,
S. C. WRIGHT,
BYRON COLEMAN,
Attorneys for Appellants.

Copy of the within is hereby admitted this 23d day of August, 1923.

JOHN T. WILLIAMS,
United States District Attorney.

[Endorsed]: Filed Aug. 23, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.
[12]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 17,922.

In the Matter of the Application for Writ of Habeas Corpus on Behalf of YEP GAN.

Order Allowing Appeal.

On motion of John L. McNab, one of the attorneys for Lee Hon Min, petitioner in the above-entitled matter and for Yep Gan, the detained:

IT IS HEREBY ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from an order and judgment heretofore made and entered herein sustaining the demurrer to the petition for writ of habeas corpus herein, discharging the order to show cause and denying the petition for writ of habeas corpus, be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit in the manner and form prescribed by law, and that meanwhile all further proceedings in this Court and by the immigration authorities be suspended and superseded until the determination of said appeal.

IT IS FURTHER ORDERED that the said Yep Gan remain in his present custody pending the hearing and final determination of said appeal.

Dated August 23d, 1923.

WM. C. VAN FLEET,
Judge of the United States District Court, Northern
District of California. [13]

Copy of the within is hereby admitted this 23d
day of August, 1923.

JOHN T. WILLIAMS,
United States District Attorney.

[Endorsed]: Filed Aug. 23, 1923. Walter B.
Maling, Clerk. By T. L. Baldwin, Deputy Clerk.
[14]

In the Southern Division of the United States Dis-
trict Court for the Northern District of Cali-
fornia, First Division.

No. 17,922.

In the Matter of the Application for Writ of
Habeas Corpus on Behalf of YEP GAN.

**Stipulation and Order Directing Transmission of
Original Exhibits to Appellate Court.**

IT IS HEREBY STIPULATED AND
AGREED by and between the respective parties
in the above-entitled cause, that the original records
of the Bureau of Immigration, which were filed in
the above-entitled court as exhibits, may be trans-
mitted in their original form, and without being
transcribed, to the United States Circuit Court of
Appeals for the Ninth Circuit, and may be con-
sidered a part of the record in the determination of
this appeal in said United States Circuit Court of

Appeals for the Ninth Circuit, without objection on the part of any of the parties hereto.

Dated: September 14, 1923.

JOHN T. WILLIAMS,
United States Attorney.

JOHN L. McNAB,

S. C. WRIGHT,

BYRON COLEMAN,

Attorneys for Petitioner and Detained, the Appellant.

So ordered.

Dated: September 14, 1923.

E. S. FARRINGTON,
Judge.

[Endorsed]: Filed Sep. 14, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.
[15]

Certificate of Clerk U. S. District Court to Transcript on Appeal.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 15 pages, numbered from 1 to 15, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the Matter of Yep Gan, No. 17,922, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for transcript on appeal (copy of which is embodied herein), and the instructions of the attorneys for the petitioner and appellant herein.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal is the sum of five dollars and thirty-five cents (\$5.35) and that the same has been paid to me by the attorney for the appellant herein.

Annexed hereto is the original citation on appeal issued herein. (Page 17.)

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 21st day of September, A. D., 1923.

[Seal]

WALTER B. MALING,

Clerk.

By C. M. Taylor,
Deputy Clerk. [16]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 17,922.

In the Matter of the Application for Writ of Habeas Corpus on Behalf of YEP GAN.

Citation on Appeal.

United States of America,
Northern District of California,—ss.

The President of the United States, to John D. Nagle, as Commissioner of Immigration at the Port of San Francisco, California, and to Honorable John T. Williams, United States District Attorney for the Northern District of California, GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty (30) days from the date hereof pursuant to an order allowing an appeal, of record in the Clerk's office of the United States District Court for the Northern District of California, Southern Division, First Division, wherein Yep Gan and Lee Hon Min are appellants and said Commissioner of Immigration is appellee, to show cause, if any there be, why the order and judgment granted against the said appellants, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable WILLIAM C. VAN FLEET, United States District Judge of the Northern District of California, Southern Division, this 23d day of August, A. D. 1923.

WM. C. VAN FLEET,
United States District Judge. [17]

Copy of the within is hereby admitted this 23d day of August, 1923.

JOHN T. WILLIAMS,
United States District Attorney.

[Endorsed]: No. 17,922. In the Southern Division of the United States District Court for the Northern District of California, First Division. In the Matter of the Application for Writ of Habeas Corpus on Behalf of Yep Gan. Citation on

Appeal. Filed Aug. 23, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

[Endorsed]: No. 4114. United States Circuit Court of Appeals for the Ninth Circuit. Yep Gan and Lee Hon Min, Appellants, vs. John D. Nagle, as Commissioner of Immigration at the Port of San Francisco, California, Appellee. Transcript of Record. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Second Division.

Filed September 21, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 17,922.

In the Matter of the Application for Writ of Habeas Corpus on Behalf of YEP GAN.

Stipulation and Order Extending Time to and Including October 23, 1923, for Return Day on Citation on Appeal.

It is hereby stipulated and agreed that the return day on the citation on appeal may be, and the same

is, hereby enlarged to and including the 23d day of October, 1923.

Dated: September 21, 1923.

JOHN T. WILLIAMS,
United States Attorney.

JOHN L. McNAB,
S. C. WRIGHT,
BYRON COLEMAN,

Attorneys for Petitioner and Detained, the Appellant.

So ordered.

Dated: September 21st, 1923.

PARTRIDGE,
Judge.

No. 17,922. Southern Division United States District Court, Northern District of California, First Division. In the Matter of the Application for Writ of Habeas Corpus on Behalf of Yep Gan. Stipulation and Order Enlarging Return Day on Citation on Appeal.

[Endorsed]: No. 4,114. United States Circuit Court of Appeals for the Ninth Circuit. Order under Subdivision 1 of Rule 16 Enlarging Time to and Including October 23, 1923, to File Record and Docket Cause. Filed Sep. 21, 1923. F. D. Monckton, Clerk.